THE HONOURABLE SHRI JUSTICE K.C. BHANU

WRIT PETITION NO.24989 OF 2002

DATED THIS THE 8TH DAY OF AUGUST, 2005

Between:-

Nalla Venkata Srinivas

S/o Trimurthulu, aged 23 years,

Occ:Junior Assistant, Mirthipadu village,

Seethanagaram Mandal,

East Godavari District. …Petitioners.

And

The Deputy Commissioner of Endowments,

Kakinada, East Godavari District and iothers. …Respondents.

This writ petition is filed seeking a Writ, Order or Direction more particularly one in the nature of Mandamus, declaring the action of the 3rd respondent in not paying the regular salaries to the petitioner since 8.1.2002 till date as illegal, arbitrary and violative of the principles of natural justice and consequently direct the respondents to conduct domestic enquiry as per the rules by giving reasonable opportunity to the petitioner to defend his case and to grant such other relief or reliefs as this Court deems fit and proper in the circumstances of the case.

The brief averments of the case are that the petitioner was appointed as Junior Assistant on 10.6.1997 by the Executive Officer, Sri Talupulamma Ammavari Temple, Chinnalova to render as Junior Assistant in the said temple. Subsequently the said Executive Officer appointed him to Sri Venugopala Swamy Temple, Mirthipadu vide Proceedings No.Dis.No.A4/3706/2000 dated 26.4.2000 fixing the time scale of Rs.425-10-455-15-560 with effect from 1.7.1999 and sanctioning the increment of Rs.10/- with effect from 1.7.2000. Vide Proceedings dated 14.11.2000 the 2nd respondent extended the 1993 Pay Revision Scales to the petitioner and directed the Executive Officer to fix his salary duly making necessary entries in the service register,.

While so, the 3rd respondent issued Proceedings in Lr.No.17/2001 dated 8.1.2002 stating that it was brought to his notice that the then Executive Officer Sri B. Bhimashekaran made certain appointments on the basis of the budget sanctioned and that mere sanction of amounts in the budget does not empower the Executive

Officer to make appointment specifically when there is a ban on the appointments. For the said reasons the 3rd respondent cancelled his appointment. Aggrieved by the said Proceedings, the petitioner preferred W.P.No.2321/2002 before this Court and this Court vide Order dated 19.6.2002 set aside the proceedings impugned in this writ petition. Pursuant to the directions of the said writ petition, the 3rd respondent re-instated the petitioner on 2.9.2002. On such re-instatement, the petitioner made a representations on 3.9.2002 and 9.10.2002 requesting the 3rd respondent to pay him the salary from the date of removal i.e., 8.1.2002 till the date of re-instatement and continue to pay his salary regularly, but the 3rd respondent, for reasons best known to him, kept the representations pending and again tried to remove the petitioner issuing show-cause notice of removal on 28.10.2002 and calling for his explanation. Vide Proceedings No.A1/24655/2001 dated 25.10.2002 the 1st respondent cancelled his apportionment of salary at Chandra Chpultry, Rajahmundry, without affording any valid reasons and giving weight to the Judgment in the above said writ petition. Hence, he got filed this writ petition.

Against this, counter-affidavit has been filed by the 3rd respondent, wherein it is averred that during the tenure of Sri Bheema Shankaram, etrstwhile Executive Officer of Sri Dwarapudi Group Temples, appointed as a Single Trustee by the 2nd respondent, the petitioner was appointed as a Clerk in the time scale of pay of Rs.425-650om Sri Talupulamma Ammavari Temple, Chinna Lova Village of Dwarapudi Mandal, East Godavari District, without obtaining approval from the Commissioner of Endowments, Hyderabad, by conveniently apportioning the salary of the petitioner sin Sri Venugiopala Swamy Temple, Mirthipadu village of Seetharam Nagaram Mandal, East Godavari District, and, as such, the original appointment of the petitioner is illegal. As per the instructions of the Comissioner of Endowments, the Deputy Commissioner, Kakinada, East Godavari District, vide Proceedings Rc.No.134/2002 dated 3.1.2002 cancelled the orders of irregular appointment of the petitioner and, as such, the services of the petitioner were terminated on 8.1.2002. Vide Proceedings Rc.No.A1/24655/01 dated 28.8.2002 the Deputy Commissioner of Endowments, Kakinada, directed the Person-in-Management to implement the order of this Court passed in W.P.No.2321/2002 and issue show-cause notice to the petitioner indicating the reasons warranting the removal/termination. Accordingly, the petitioner was taken on duty on 2.9.2002 and

was issued with a show-cause notice on 14.9.2002 calling upon his explanation within 15 days. In reply to the show-cause notice, the petitioner offered explanation, wherein he

himself admitted that he was appointed during the ban period i.e., 10.6.1997, however, the temple authorities were taking appropriate action to make payment of salary to him by obtaining necessary orders from the concerned authorities. While so, the petitioner approached this Court without any cause of action and despite knowing all the steps being taken by the 3rd respondent.

Under Section 57 of the Act 30/1987 the establishment charges of the temple shall not exceed 30% of its accessible income. The annual income of the temple is about Rs.60,000/- and its present establishment charges have already exceeded 62%. Therefore, payment of salary claimed by the petitioner would be in violation of statutory provisions. In those circumstances, the 3rd respondent sought for dismissal of the writ petition.

In the reply-affidavit filed, it is stated that actually Bhima Sankaram is an Executive Officer of Dwarapudi Group of Temples and in the said capacity he is empowered to appoint any number of persons if there is a need. The Executive Officer is empowered to draw the salaries of the staff from any of the temple under his control, subject to sanction from the 2nd respondent-Assistant Commissioner, and the Executive Officer admittedly obtained sanction from the 2ndrespondent-Assistasnt Commissioner vide Proceedings D.Dis.No.A4/3706/2000 dated 26.4.2000 and as per the said sanction he is drawing his salary from the temple. Later, the benefit P.R.C 1999 was extended to him and his salary has been apportioned by the 1st respondent from the funds of the Chandra Choultry, Rajahmundry and Sri Venugoipala Swamy Temple, Mirthipadu. After enquiring the matter thoroughly and by considering the facts and circumstances of the group of temples and its income, the 1st respondent issued sanction of his salary. Since no opportunity was given to him for cancellation of his appointment he got filed W.P.No.2321/2002 and got orders setting aside the cancellation of his appointment and in obedience to the orders of this Court, the Executive Officer re-admitted him into service on 2.9.2002 and by issuing a show-cause notice called for his explanation stating that since his appointment was made irregularly why his services should not be terminated, for

which he submitted explanation. On such explanation the 1st respondent directed the 3rd respondent to obtain legal opinion from the Standing Counsel and take action based on the opinion and the Standing Counsel accordingly gave his opinion stating that the respondents are at liberty to initiate disciplinary action against him. However, till date the petitioner has not received any proceedings about the disciplinary action and he is continuing in the service. In spite of his continuance in service he is not being paid the salary and, as such, he got filed the present petition and along with it he got filed W.P.M.P.No.23855/2003, which was allowed directing the respondents to pay his salary and its arrears with utmost expedition and in any case within a period of seven days from the date of receipt of that order and accordingly he was paid the arrears to the tune of Rs.15,000/-. The respondents are bound to pay him the salary as he is continuing in service, without considering the fact whether his appointment is regular or irregular. Even though his initial appointment was irregular as alleged by the respondents, but the same was confirmed by the 1st and the 2nd respondents through their orders by applying 1999 P.R.C and apportionment of salary. Therefore, it is prayed to direct the respondents to pay his salaries regularly including arrears of salary and pass such other order or orders as this Court deems fit and proper in the circumstances of the case.

Learned counsel for the petitioner contended that the petitioner herein was appointed as Clerk in the temple by the Single Trustee, thereafter the 2nd respondent extended the revised pay-scales vide Proceedings dated 14.11.2000 and even if the appointment of the petitioner is illegal the same has to be ratified by the 2nd respondent. Therefore, he is entitled for regularization of his services and consequently he is entitled for regular pay-scales. On the other hand the learned counsel appearing for the 1st and 2nd respondents contended that at the time of ban period the petitioner was appointed and, as such, the appointment of the petitioner is illegal and as there is no sanction post at the time of his appointment the question of regularization of the petitioner does not arise.

The learned counsel for the petitioner placed strong reliance on the decisions of this Court in W.P.No.4402/2002 and W.P.No.22937/2002. Those decisions have no application to the present facts of the case. Those two decisions are relating to the setting aside of removal order passed by the respondents therein against the petitioners therein on the ground that no notice or opportunity was given before the

termination of the petitioner, but the relief sought for in the writ petition is that the action of the 3rd respondent in not paying the regular pay-scales is illegal. Subsequently the writ petitioner also filed miscellaneous petition for payment of salary from 8.1.2001 till the date of filing the said petition. According to the petitioner he was initially appointed as a Junior Assistant on 10.6.1997 by the Executive Officer of Talupulamma Ammavari Temple, at Chinnalova by the Executive Officer of the said temple. Thereafter the Executive Officer appointed him to Venugopala Swamy Temple, Mirthipadu vide Proceedings dated 26.4.2000 fixing the time scale of pay. The specific stand taken by the 1st respondent is that there was a ban of appointments and without obtaining any orders from the Commissioner of Endowments, Hyderabad, the appointment was made and, therefore, the appointment of the petitioner by the Executive Officer is irregular and beyond his jurisdiction. Under Section 35 (1) of the Andhra Pradesh Charitable And Hindu Religious Institutions & Endowments Act, 1987, every vacancy, whether permanent or temporary, amongst the office-holders or servants of a charitable or religious institution or endowments shall be filled by the Trustee and in respect of institutions having income exceeding rupees ten lakhs the Executive Officer shall appoint the office holders and servants thereof.

In the writ petition it is stated that the petitioner was appointed by the Executive Officer, whereas the appointment order filed by the petitioner shows that he was appointed by the Single Trustee. Though the petitioner filed affidavit, no material is filed to show that by the date of appointment there was a clear vacancy. The Proceedings of the 2nd respondent dated 14.11.2000 ordering to fix the revised pay-scales of 1993 to the petitioner and the Proceedings of the Executive Officer dated 7.5.2000 giving the pay-scale is not an approval from the Government Authority. According to the learned counsel for the petitioner neither the 2nd respondent nor the Executive Officer is the competent authority to approve the appointment made by the Single Trustee. Admittedly, there is a ban during the period of the appointment of the petitioner, so also there is no sanctioned vacancy in the 3rd respondent institution, which fact has not been specifically denied or disputed in the reply affidavit. By virtue of the orders passed by this Court he may be continuing. However, long he may be continuing, without following due procedure his services cannot be

regularized. A person who has come from the back door has to go through the back door only. As on the date of appointment of the petitioner there is a ban and there was no sanctioned post, the subsequent proceedings issued by the 2nd respondent does not validate the illegal appointment in view of the fact that the 2nd respondent is not the competent authority to pass such proceedings.

Therefore, the writ petition is devoid of merits, which is accordingly dismissed. No costs.

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K.C. BHANU, J.,

Dt.08.08.2005

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